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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**
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9 TERRY DOUGLAS BEMORE,
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Petitioner,

vs.

ROBERT L. AYERS, JR., Warden of San
Quentin State Prison,

Respondent.

CASE NO. 08cv0311 LAB (LSP)

DEATH PENALTY CASE

**ORDER STAYING EXECUTION
OF DEATH SENTENCE AND
SETTING DEADLINE FOR
OBJECTIONS TO COUNSEL;
DENYING REQUEST FOR NUNC
PRO TUNC FILING**

On February 15, 2008, Petitioner Terry Douglas Bemore filed a request for appointment of counsel for federal habeas proceedings and for a stay of execution of his sentence. Pursuant to 18 U.S.C. § 3599, Petitioner's request for appointment of counsel is **GRANTED**. Pursuant to Local Rules HC.3(d)(1), the Court intends to appoint state habeas counsel Robert R. Bryan to represent Petitioner in his federal habeas proceedings, unless an objection to Mr. Bryan's appointment is filed within the next thirty (30) days, on or before **March 26, 2008**.

IT IS FURTHER ORDERED, pursuant to Local Rules HC.3(g)(3), that the execution of Petitioner's sentence of death, and all court and other proceedings related to the execution of that sentence, including preparation for execution and the setting of an execution date, are stayed for one hundred and twenty (120) days to allow for preparation of the federal petition, up to and including **Friday, June 20, 2008**.

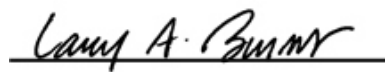
1 Petitioner additionally requests that this renewed request for federal counsel be deemed
2 effective, *nunc pro tunc*, as of October 17, 2007. Petitioner makes this request based on his previous
3 requests for appointment of federal habeas counsel made in 1998 and 2000, both of which were denied
4 without prejudice as premature. Petitioner argues that his prior requests became ripe when the
5 California Supreme Court denied his state habeas petition, but due to a state court clerical error, he was
6 not apprised of the denial until January 10, 2008.

7 The only reason this Court discerns for this request is to potentially toll the statute of
8 limitations for the filing of the federal petition under the AEDPA, which provides that state prisoners
9 generally must file any petition for federal post-conviction relief within one year of the date that the
10 state court judgment became final. See 28 U.S.C. § 2244(d)(1)(A). The one-year limitation period
11 under the AEDPA is tolled so long as “a properly filed application for State post-conviction or other
12 collateral review” is “pending.” 28 U.S.C. § 2244(d)(2). However, in Woodford v. Garceau, 538 U.S.
13 202, 207-10 (2003), the United States Supreme Court held that a request for appointment of counsel
14 did not create a “pending” habeas case on the merits. The Supreme Court held that a case is pending
15 only upon the filing of a habeas petition in federal court. See Garceau, 538 U.S. at 210. As of the
16 present date, the Court can discern no apparent prejudice to Petitioner as to timely filing a federal
17 petition under the statute of limitations set out under the AEDPA, and to the extent Petitioner’s request
18 is one for equitable tolling, it is **DENIED WITHOUT PREJUDICE** as premature .

19 The Clerk of the Court shall serve a certified copy of this order on Petitioner Terry Bemore;
20 Attorney Robert R. Bryan; Respondent, Robert L. Ayers, Jr., Warden of San Quentin Prison; the Clerk
21 of the San Diego County Superior Court; Garrett Beaumont, Deputy Attorney General of the State of
22 California; Office of the District Attorney of San Diego County; and Michael G. Millman, Executive
23 Director of the California Appellate Project, San Francisco.

24 **IT IS SO ORDERED.**

25 DATED: February 26, 2008

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27 **HONORABLE LARRY ALAN BURNS**
28 United States District Judge